



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**IB-456/(ND)/2022**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**Mr. Sanjay Soni**

**Sole Proprietor of M/s. S.S. Jewellers**

Shop No 3, D-1/502, Ground Floor,  
Gall No. 4, Ashok Nagar, Shahadra,  
New Delhi-110093

...Applicant/Operational Creditor

**Versus**

**M/s. Ganga Business Private Limited**

(Through its Director Shri Murari Lai Soni)

3318, 1st Floor, Bank Street, Karol Bagh,  
New Delhi -110005

...Respondent/Corporate Debtor

IB-456/ND/2022

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**Coram:**

**SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)**

**SHRI.RAHUL BHATNAGAR, Hon'ble Member (Technical)**

**Counsel for Applicant:** Mr. Palash S. Singhai

**Counsel for Respondent:** Mr. Abhishek Parmar

**ORDER**

**Per: P.S.N PRASAD, MEMBER (JUDICIAL)**

**Date: 22.12.2022**

1. This is an application filed by the Applicant Mr. Sanjay Soni seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent M/s. Ganga Business Private Limited for the alleged default on the part of the Respondent in clearing the debt of Rs. 98,95,62,809/- (Rupees Ninety Eight Crores Ninety Five Lakhs Sixty Two Thousand Eight Hundred Nine). The details of transactions leading to the filing of this application as averred by the Applicant/Operational Creditor are as follows:

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- i. That the Operational Creditor is engaged in manufacturing, wholesale/retail trading, exporting and supplying highly qualitative range of Precious Gem Stone, Semi Precious Gemstone, Gemstone Bead, Diamond Studded Jewellery, Kundan Meena Jewellery, Victorian Jewellery, Birth Stone, Gemstone Statue, Gold Jewellery, Rough Precious Stone, Rough Semi Precious Stone, Semi Precious Stone, Stone Bead and Semi-Precious Bead.
- ii. That the Corporate Debtor i.e., M/s Ganga Business Private Ltd. is a company registered under the Companies Act, 1956, having its registered office at 3318, 1st Floor, Bank Street, Karol Bagh, New Delhi 110005 and is engaged in the business of wholesale /retail trade of gems and other precious stones. The Corporate Debtor approached the Operational Creditor in the Month of January 2015 and expressed its interest in buying Gems and Gold Ornaments.
- iii. That the Operational Creditor acting upon the assurances and representations given by Corporate



Debtor, agreed to sell the Gems and Gold Ornaments as per order and requirement. The Operational Creditor and the Corporate Debtor mutually agreed to follow the usual business practice regarding purchase of Gems and Gold Ornaments and payment qua the Invoices to be raised.

- iv. That the Corporate Debtor on 23.01.2015, purchased 4090.300 gms of 18 Carat Gold Ornaments for the total price of Rs. 94,69,044. Operational Creditor upon the delivery of the said order, raise its Tax Invoice No.8 dated 23.01.2015 for Rs.95,63,734/- (including 1% VAT). Upon the receipt of said Tax Invoice, the Operational Creditor and Corporate Debtor agreed that the payment qua the said invoice and for the future invoices will be released on quarterly basis. As per the usual customary business practice, Operational Creditor agreed to make debit entries for each and every invoice of sell and credit entry as and when the payments are received from Corporate Debtor.

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- v. That the Operational Creditor regularly and diligently supplied Gems and Gold Ornaments as desired and demanded by Corporate Debtor. Corporate Debtor duly accepted the delivery of the Gems and Gold Ornaments without disputing the quality and quantity of the same. Resultantly, Operational Creditor delivered Gems and Gold Ornaments worth Rs.99,58,22,809/- during a span of 1 year. In view of the same Operational Creditor raised 30 Tax Invoices for the goods supplied to Corporate Debtor as per its oral demand and Corporate Debtor duly acknowledged the Tax Invoices.
- vi. That the Corporate Debtor failed to adhere with the assurance and promise to release the payment qua the Tax Invoices on quarterly basis for the purchase of Gems and Gold Ornaments. The Tax Invoices for the purchase made by Corporate Debtor were raised till the month of February 2016 and thereafter, Operational Creditor stopped supplying the goods

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due to failure on the part of the Corporate Debtor to make the necessary payments.

- vii. That the Corporate Debtor after the repeated and several reminders and follow ups by Operational Creditor, released partial payment of Rs.62,60,000/- on different tranches and the last payment was received on 31.10.2020. However, the remaining payment of Rs. Rs.98,95,62,809/ -(Rupees Ninety Eight Crore, Ninety Five Lakhs, Sixty Two Thousand, Eight Hundred Nine) is still due and payable.
- viii. That Operational Creditor through its counsel sent a legal notice dated 11.10.2021 seeking release of outstanding payment from the Corporate Debtor within 15 days from the receipt of the legal notice. However, the Corporate Debtor vide its letter dated 31.10.2021 informed its inability to repay the outstanding liability qua the Operational Creditor and failed to clear and repay the operational debt which became due and payable on 31.10.2021 (15 days from the receipt of notice). In view of the same the Corporate Debtor has committed has committed



a default in repayment of the operational debt on 31.10.2021.

ix. That the Operational Creditor served a Demand Notice dated 02.05.2022 under Section 8 of the IBC, 2016 upon the Corporate Debtor calling upon the Corporate Debtor to either repay the outstanding operational debt within 10 days or apprise the Operational Creditor about any pending/pre-existing dispute qua the debt due and payable. However, the Corporate Debtor failed/defaulted to repay the outstanding debt within 10 days from the receipt of Demand Notice as well as failed to point out any pre-existing dispute.

2. Consequent to the notice issued by this Tribunal, the Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor stating as below:

i. That the Corporate Debtor purchased ornaments including gold and other stones from the Operational Creditor to supply to one of its sister concern Mohan Gems and Jewels Pvt. Ltd. wherein the Corporate Debtor had substantial shareholding.



In the interregnum Mohan Gems and Jewels Pvt. Ltd. went into CIRP and was sold as a going concern under Liquidation wherein the Corporate Debtor lost its entire stake in the Mohan Gems including the outstanding amount for the ornaments supplied to it after purchasing from Operational Creditor.

- ii. That the Corporate Debtor purchased Gems and Gold Ornaments worth Rs.99,58,22,809/- from Operational Creditor and for the same Operational Creditor raised 30 tax invoices which were duly received by the Corporate Debtor.
- iii. That the Corporate Debtor, due to certain financial constraint, was not able to fulfil its promise to clear the pending tax invoices on quarterly basis, however, in order to continue the business transaction with Operational Creditor released partial payment for the outstanding liability.
- iv. That the Corporate Debtor is not in a position to repay the outstanding liability towards Operational Creditor. In view of the same, the Corporate Debtor

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has requested the Operation Creditor to grant some more time to repay Rs. 98,95,62,809.

3. The Counsel for the Operational Creditor has filed its written submissions stating that:

i. That the debt in the present case is an admitted debt due and payable which can be seen from the following documents:

- Ledger Account maintained by the Operational Creditor reflecting the non-payment of outstanding dues.
- Balance Sheet for 2020-21 of the Corporate Debtor acknowledging the liability qua Operational Creditor.
- Tax Invoices raised by the Operational Creditor from 23.01.2015 to 26.02.2016.

ii. That the Operational Creditor has not initiated any proceedings for the recovery of the debt of Rs. Rs.98,95,62,809/- (Rupees Ninety Eight Crore, Ninety Five Lakhs, Sixty Two Thousand, Eight Hundred Nine) and since the Corporate Debtor has committed a default in payment and the debt is still not discharged.



It is clear that the Corporate Debtor is a Company in distress and requires immediate revival and restructuring as per the scheme enshrined under the IBC.

4. The Counsel for the Corporate Debtor has filed its written submissions in respect to the submissions made in the application:
  - i. That owing to the present scenario and the circumstances arisen due to witnessing of COVID-19 Pandemic and lockdown due to which businesses have already come at halt and suffered huge losses resulting into the stoppage of cash flow in the market, the Respondent seeks some further time to allow the Respondent to repay its dues.
  - ii. That the Corporate Debtor has no money in his bank account at the time of the filing of this reply to repay his outstanding dues that he owes to the Operational creditor.
5. We have heard the Ld. Counsels for the Operational Creditor and Corporate Debtor and perused the



averments made in the application as well as the documents enclosed with the application.

6. The Corporate Debtor has acknowledged the debt in its reply to the present Section 9 Application and submitted that the present state of affairs of the Corporate Debtor are not favourable and they require time to pay the amount to the Operational Creditor. Section 9(5) of the IBC, 2016 provides as under:

*The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—*

*(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—*

*(a) the application made under sub-section (2) is complete;*

*(b) there is no [payment] of the unpaid operational debt;*

*(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;*

*(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*

*(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.*



7. In the light of the admission of debt by the Corporate Debtor and in view of the fact that the Corporate Debtor has not raised any contention w.r.t any pre-existing dispute between the parties and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor and upon appreciation of the documents placed on record to substantiate the claims, this Adjudicating Authority is of the view that there is an operational debt which is due from the Corporate Debtor and the Corporate Debtor has defaulted in making payment of the amount due and along with that, in the absence of any preexistence of dispute, this tribunal admits this application and initiates CIRP on the Corporate Debtor with immediate effect:

1. The interim resolution professional (“IRP”) proposed by the Applicant, Ms. Deepa Gupta, Reg. No: IBBI/IPA-002/IPN00867/2019-20/12801 is being confirmed by this Bench. She shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of



the Code and file his report within 30 days before this Bench. Ms. Deepa Gupta has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 02.06.2022.

2. Section 16(3)(b) of the Code mandate that the Resolution Professional proposed by the Operational Creditor shall be appointed as the Interim Resolution Professional ( IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him/her. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The

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proposed Interim Resolution Professional Ms. Deepa Gupta has submitted the declaration in Form 2 dated 02.06.2022.

3.A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

(a) the institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

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(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent.

4. The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

5. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

6. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under Section 31(1) or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

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7. The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.

8. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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**(RAHUL BHATNAGAR)  
MEMBER (TECHNICAL)**

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**(P.S.N. PRASAD)  
MEMBER (JUDICIAL)**

*Pronounced today under Rule 151 of NCLT Rules, 2016 as Hon'ble Member (J) Sh. P.S.N Prasad is not holding the court today.*

Court Officer  
22.12.2022